Decision 05-10-024 October 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs.	Rulemaking 01-08-028 (Filed August 23, 2001)

OPINION MODIFYING DECISION 03-12-060 IN RESPONSE TO VARIOUS MOTIONS ASKING TO SHIFT FUNDS OR EXTEND TIME

I. Background

There are various motions currently pending in this docket that, in effect, request changes to the text of previously-issued decisions. The motions are as follows:

1. The Motion of the Pacific Gas and Electric Company (PG&E) for Authorization to Transfer Unused Prior Year Funds to the Public Purpose Programs Energy Efficiency Balancing Account (PPPEEBA) (filed June 24, 2005, amended June 30, 2005, and again on August 1, 2005).

2. The Motion of PG&E for Expedited Authorization to Shift Energy Efficiency Program Funds (filed May 27, 2005, amended July 6, 2005, amended again on August 1, 2005, and then supplemented on August 5, 2005).

3. The Motion of the Alliance to Save Energy to File For No-Cost Extension of the 2004-2005 Energy Efficiency Program Proposal (June 10, 2005), in which the Alliance to Save Energy asks that it be allowed to experience reimbursable costs through the end of the 2005-2006 school

year, rather than having to terminate all program activity at the end of 2005.

4. The Motion of D&R International and California Integrated Waste Management Board for Transfer of Funds Between School Energy Efficiency Programs (served on all parties May 4, 2005, but not actually filed until August 20, 2005), where D&R International seeks to add to its program funds remaining amounts from a similar program managed by the Integrated Waste Management Board.

In a ruling dated July 21, 2005, assigned Administrative Law Judge (ALJ) Steven Weissman ruled that each of these motions would be treated as a petition for modification of a prior decision in light of the fact that this Commission has not delegated to the Energy Division staff or the ALJ the authority to make the requested changes through ruling or less formal communication. We concur with the approach proposed in the July 21st ruling and herein consider the requests to modify prior decisions.

II. Discussion

A. The Motion of the PG&E for Authorization to Transfer Unused Prior Year Funds to the Public Purpose Programs Energy Efficiency Balancing Account (Filed June 24, 2005, amended June 30, 2005, and again on August 1, 2005)

In this motion, PG&E reports that the California Energy Commission (CEC) has recently refunded certain prior year Public Goods Charge (PGC) funds to PG&E. The company now seeks authority to use these funds in 2005 for essentially the same purpose for which they were originally paid to CEC: to update the Database for Energy Efficient Resources (DEER).

Public Utilities Code Section 381(b) provides as follows:

> "The commission shall allocate funds collected pursuant to subdivision (a) [i.e., Public Goods Charge funds], and any interest earned on collected funds, to programs which enhance system reliability and provide in-state benefits as follows:
>
> (1) Cost-effective energy efficiency and conservation activities."

In April 1999, in Resolution E-3592, the Commission quoted Code Section 381(b), stated the need for the CEC to collect data needed to calculate or compare cost effectiveness of energy efficiency measures and programs (since at that time the utilities were no longer involved with data studies and data collection), and specifically authorized the CEC to perform two studies during program years 1999 and 2000, including a study updating the DEER. (Resolution E-3592, April 1, 1999, at 46-47.)

The Commission provided that the utility payments for these studies should be tracked by each utility in an Energy Efficiency-DSM memorandum account, and any remaining funds for these projects should be returned to the utilities for pro rata redistribution to the respective utilities' Energy Efficiency programs (*Id*. at 48; Finding of Fact 92, page 91).

Later, in D.01-06-037 (June 14, 2001), the Commission noted the need for additional Market Assessment and Evaluation activities (at pages 10-11), and approved a third study to be done by CEC. (*See also* Finding of Fact 12, Conclusion of Law 2, Ordering Paragraph 2, and Attachment A, page 5). Pursuant to Resolution E-3592 and D.01-06-037, from October 1999 through December, 2002 PG&E submitted PGC funds to the CEC totaling $3,132,500, to cover CEC's costs to perform the three studies.

In January, 2005, Mark Jones of CEC notified PG&E that a portion of the funds submitted to the CEC had not been used and were available for transfer back to PG&E. He requested that PG&E send a formal request for return of the unspent funds. On January 28, 2005, Frank Diaz of PG&E sent a letter to Jones requesting that the funds be returned. On March 3, 2005, PG&E received a check from the CEC for $186,401.20, which was a refund of PG&E's share of the unspent funds from these studies.

At the time of the studies, as required by Resolution E-3592, PG&E had maintained the Energy Efficiency California Energy Commission Memorandum Account (EECEC Memorandum Account) which tracked PG&E's payments for these studies. The Preliminary Statement to the EECEC Memorandum Account (Paragraph 4b) stated that if the CEC returned any funds for the studies, these refunds were to be placed in the EECEC Memorandum Account. In 2002, however, in Decision (D.) 02-10-019, Ordering Paragraph 3, the Commission gave PG&E authority to close the EECEC Memorandum Account because PG&E had met all funding commitments to the CEC. PG&E's Advice Letter (AL) 2298-E (November 4, 2002) submitted various revisions to its electric Preliminary Statement in accordance with D.02-10-019, including the elimination of the EECEC Memorandum Account.[1] Since the EECEC Memorandum Account no longer exists, PG&E has placed the CEC's refund check in two general purpose reserve accounts, Account #2530023 (Electric) and Account #1823090 (Gas), pending direction regarding the proper use and accounting treatment of the funds.

[1] AL 2298-E was approved by letter dated January 27, 2003 from Douglas Long of the Energy Division.

The Commission has often emphasized, most recently in D.05-04-051, the importance of accurate information concerning the calculation of cost-effectiveness so that the performance basis of the energy efficiency programs can be evaluated, a process generally known as evaluation, measurement, and verification (EM&V). The Commission has recognized that the DEER is an important part of this evaluation process. In D.05-04-051 the Commission held that the DEER "should be the source of all assumptions that are used to estimate load impacts, to the extent possible." (*Id.* at 25-26.) The Commission noted that the DEER "has been jointly developed by the CEC and this Commission, with input and support from the IOUs and other interested stakeholders. It is designed to be the primary source for energy savings and cost-effectiveness input assumptions for program planning." (*Id.* at 26; *see also* Finding of Fact 17 at page 81.)

Because of the importance of the DEER, the Commission has also recognized that it must be kept up-to-date and accurate. In a later portion of D.05-04-051, the Commission stated that "[o]ne of the most important next steps in the development of our future EM&V protocols will be to develop a systematic process for collecting and reporting [program] information, including regular updates to the DEER database, for use during the program evaluation process." (*Id.* at 53.) At page 72 of the same decision, the Commission stated that Joint Staff will need to develop EM&V protocols that include information on "the schedule and process for updating the DEER database on a regular basis, using the results of *ex post* measurement studies." (*Id.*, Paragraph e), page 72; *see also* Ordering Paragraph 11e, at page 94.)

PG&E requests approval to transfer the CEC refund to two sub-accounts of the PPPEEBA, 89% to the Electric sub-account and 11% to the Gas sub-account. These funds will then be used to cover the project and administration costs of a PG&E-managed Measure Cost Evaluation Study to update the incremental measure costs of the energy efficiency measures included in the DEER. This study is a continuation of the activities on the DEER Update project, one of the studies for which the funds were originally allocated to the CEC, and thus PG&E's request is consistent with the original purpose for the CEC funding and with D.05-04-051. The Measure Cost Evaluation Study, now being performed by Summit Blue Consulting, is intended to update to the DEER. This study has been reviewed and approved by a Project Advisory Committee consisting of representatives from the other California Investor-Owned Utilities, the CEC, Energy Division, and the Office of Ratepayer Advocates. Summit Blue Consulting began work on the Measure Cost Evaluation Study on January 5, 2005 and it is expected that Summit Blue Consulting will update the DEER in August or September, 2005 as a result of the study. Summit Blue Consulting is charging $397,430 for the study; PG&E's share of this cost is $162,174.34. Therefore, application of the CEC refund of $186,401.20 to the costs associated with the Measure Cost Evaluation Study will cover PG&E's share of the fee to the consultant, plus PG&E's internal project management costs. The motion seeks authority to transfer the refund to the PPPEEBA for this purpose.

Commission Rule 47(b) provides, inter alia, that if more than one year has elapsed since the effective date of the decision proposed to be modified, the petition "must also explain why the petition could not have been presented within one year of the effective date of the decision." (Commission Rules of Practice and Procedure 47(d).) PG&E states that the present request to modify D.03-12-060 could not have been filed within one year of the effective date of that decision – i.e., by December 18, 2004 – because, as shown in a Declaration of

Frank Diaz, the CEC refund was not received until March, 2005. Therefore, the timing of PG&E's request for a modification of D.03-12-060 is justified.

In its second amended motion, filed August 1, 2005, PG&E also asks the Commission to modify D.03-12-060 (and, if the Commission believes it is appropriate, D.04-08-019) to allow utilities to seek approval from the assigned ALJ to shift prior years' uncommitted, unspent funds into Commission-approved energy efficiency programs and related activities, such as Commission-approved studies related to the EM&V of these programs. This request was not part of the original motion, which by ALJ ruling is being treated as a petition for modification. This proposal represents a fundamental change to the way fund reallocations are handled, and deserves broader notice and more careful consideration than it can receive as a last-minute addition to a motion on another topic. Thus, we will not address the proposed delegation in response to this motion.

Specifically, as required by Commission Rule 47(b), PG&E proposes that the following language be added to D.03-12-060 to address the specific funds transfer proposal at issue here:

- *A new Finding of Fact*: PG&E has received a refund of energy efficiency funds previously given to the CEC under Resolution E-3592 and D.01-06-037 for Market Assessment and Evaluation activities, including an update of DEER. From time to time other such refunds of energy efficiency funds, from CEC or from vendors, may occur.

- *A second new Finding of Fact:* Energy Division staff has requested that the California Investor Owned Utilities, including PG&E, fund studies to update the DEER.

These proposed findings are acceptable, but are insufficient to reach the desired result. We will also add the following:

- *A new Conclusion of Law*: PG&E should be allowed to redirect the funds previously given to the CEC under Resolution E-3592 for the purpose of supporting Market Assessment and Evaluation activities consistent with those previously to be undertaken by the CEC.

- *A new Ordering Paragraph*: PG&E shall redirect the funds previously given to the CEC under Resolution E-3592 for the purpose of supporting Market Assessment and Evaluation activities consistent with those previously to be undertaken by the CEC.

B. The Motion of PG&E for Expedited Authorization to Shift Energy Efficiency Program Funds (Filed May 27, 2005, amended July 6, 2005, amended again on August 1, 2005, and then supplemented on August 5, 2005)

In this motion, PG&E requests authority to shift unspent and uncommitted funds from prior years into the following four energy efficiency programs:

1. The 2004-2005 Single Family Rebate Program – PG&E requests a $1.6 million fund-shift to continue the 2004-2005 program;

2. The 2004-2005 Appliance Recycling Program – PG&E requests a $350,000 fund-shift to continue the 2004-2005 program;

3. The 2004-2005 Standard Performance Contract Program – PG&E requests a $880,000 fund-shift to fund the "waiting list" of 2004-2005 customer applications; and

4. The Residential New Construction (RNC) Program, Program Year (PY) 2002 – PG&E requests a $456,057 fund-shift to cover a projected deficiency in PY 2002 funds.

Below, we discuss each of PG&E's fund-shifting requests and the proposed source of prior year funds.

1. The 2004-2005 Single Family Rebate Program

PG&E requests authority to shift $1.6 million from prior year funds into the 2004-2005 Single Family Rebate program (non-lighting measures) to allow PG&E to accommodate the popularity of this program. PG&E predicts that available funds for the 2004-2005 Single Family Rebate program (non-lighting measures) will be exhausted by late summer. PG&E reports that due to lack of available funds, it has been forced to close a majority of the program's retrofit measures as of July 31, 2005. Further, PG&E forecasts that all non-lighting measures will be closed by late summer if it does not receive authority to shift funds into the program.

PG&E states that it has already shifted funds into this program consistent with current Commission rules on fund-shifting, but such fund-shifts have been insufficient to meet the program funding needs. Therefore, because this is a valuable and popular program, PG&E requests that $1.6 million be shifted from prior year funds into the 2004-2005 Single Family Rebate program (for non-lighting measures). In order to increase the cost-effectiveness of the program, the additional funds would not be made available for all measures, but would only be spent on those measures with high cost-effectiveness, such as clothes washers, pool pumps, and cooling measures with additional estimated savings of 2.7 mW, 2,410 mWh, and 315,000 therms for a total of $1.6 million.

2. The 2004-2005 Appliance Recycling Program

PG&E requests authority to shift $350,000 from prior year funds into the 2004-2005 Appliance Recycling program to allow PG&E to accommodate the popularity of this program. The Appliance Recycling program provides the customer a rebate for the pickup of an old, inefficient refrigerator or freezer. PG&E states that this program also would have to be shut down before the end of 2005 if prior year funds cannot be shifted into the program. PG&E plans to shift limited administrative funds within the program to cover some planned program expenditures. PG&E states that it does not have funds from other programs within the same fund-shifting category that could be shifted into the Appliance Rebate program. The amount requested – $350,000 – would provide funding to serve an additional 2,400 homes, extending the program for about two additional months.

3. The 2004-2005 Standard Performance Contract Program (SPC)

PG&E requests authority to shift $880,000 from prior year funds into 2004-2005 nonresidential Standard Performance Contract program to accommodate gas applications that are currently waitlisted due to greater than expected program participation. The SPC program offers cash incentives for custom-designed energy saving retrofits of existing business facilities.

Although the program is designed primarily for large and medium sized businesses, small and very small businesses can also participate if the desired energy efficiency measures are not included in the Express Efficiency rebate program. SPC incentives are paid based on the kilowatt-hours (kWh) of electricity or therms of gas saved.

After PG&E committed all of its approved PY2004-2005 SPC gas funding for customer retrofit projects by April 2005, the SPC program received 30 additional applications for gas retrofit projects that have been placed on a waiting list. Based on past years' experience, PG&E estimates that additional applications may yet be submitted in PY 2005, creating the need for additional funding. These 30 projects along with the anticipated applications through the end of the year may provide a potential additional 880,000 therms in savings. PG&E states that it had originally planned to fund SPC applications on the waiting list with funds made available due to cancellations, as was done with previous years' applications. However, the waiting list of PY2005 gas applications has now exceeded all projections for potential application withdrawals and the amounts that could reasonably be transferred into the program from other sources.

Accordingly, PG&E requests authority to shift $880,000 of prior year funds into the program to fund the 30 waitlisted gas applications and provide some relief for the applications anticipated through the end of 2005.

4. The Residential New Construction Program PY 2002

PG&E requests authority to shift $456,057 into its PY 2002 RNC program to satisfy the funding deficiency in the PY 2002 program.

PG&E's RNC program is a multi-year program which encourages the incorporation of energy efficiency measures into new homes. Funds are often committed in one year but not spent until a later time due to the fact that construction occurs over an extended time period of up to 24 months from the date of the project commitment. For this reason, PG&E continued to reconcile its PY 2002 RNC program budget and actual expenditures several years after the close of the PY 2002 RNC program.

PG&E records reflect that its PY 2002 RNC program is projected to be overspent by $456,057. Accordingly, PG&E requests authority to shift prior year funds in that amount into its PY 2002 RNC program to cover this projected funding deficiency.

PG&E made several changes to its requested associated with PY 2002 RNC. In its May 27, 2005 filing, PG&E projected $783,000 in over-expenditures. PG&E attributed this cost overrun to commingling of PY 2002 and first quarter PY 2003 cost data due to internal programming oversight. In its July 6, 2005 and August 1, 2005 filings, PG&E reduced its projection to $429,692 because it was able to distinguish between PY 2002 and PY 2003 costs. Then, in its supplemental filing dated August 5, 2005, PG&E again changed its request to $456,057 to reflect actual costs booked through July 31, 2005. According to PG&E, the amount of $429,692 reflected costs only through April 30, 2005.

5. PG&E's Proposed Sources of Funds for the Requested Fund-Shifts

PG&E has informed the Commission's Energy Division of each of the funding deficiencies described above and has also discussed sources of funding from unspent and uncommitted prior year funds. The table below shows the proposed sources of funds to cover the fund-shifts requested herein. The table reflects the status of available funds as of April 30, 2005.

Proposed Sources of Funds [1]

	Sep-04 [2]	Apr-05
Unspent/Uncommitted - RNC PY01	1,847,000	2,140,643
Unspent/Uncommitted - RNC PY00	1,270,000	737,810 [3]
Unspent/Uncommitted - SPC PY99-02 (Gas only)		800,758
Unspent/Uncommitted - SBD PY01 (Gas only)		79,022
Total	**3,117,000**	**3,758,234**

[1] Excluded from the prior year program carry-over funds disclosed in the June 1st filing.
[2] Disclosed in the September 2004 meeting with Energy Division staff.
[3] Remaining balance of the unspent/uncommitted funds authorized by an ALJ Ruling on April 18, 2005. This ruling authorized fund-shifting of $303,000 to PY01 Res Retrofit Program and $229,000 to PY04/05 Multi-Family Rebate Program but denied PG&E's request of $737,870 to recover some costs incurred in the PY03 Single Family Rebate program.

Given the explanations provided by PG&E on the various changes to the requested additional funding for PY 2002 RNC program, we have concerns about the accounting. While actual expenditures may not exactly match program budgets, PG&E failed to convince us that it could not have averted significant cost overruns. Through careful monitoring of the various program commitments, PG&E could have prevented the significant cost overrun. Therefore, PG&E's $456,057 additional funding request for PY 2002 RNC is denied.

PG&E has not complied with the requirement of Commission Rule 47(b), that it propose the specific language be added to D.03-12-060 to address the specific funds transfer proposal at issue here. However, in order to resolve this request as soon as possible, we will adopt the following changes:

1. The addition of a Finding of Fact stating: "PG&E is seeking authority to shift $1.6 million of unspent and uncommitted prior year energy program funds into the 2004-2005 Single Family Rebate program; $350,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Appliance Recycling program; $880,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Standard Performance Contract program."

2. The addition of a Finding of Fact stating: "Granting PG&E's request for fund-shifting will provide necessary funds to support successful ongoing programs."

3. The addition of a Conclusion of Law stating: The Commission should approve PG&E's request to shift funds as set forth in its Motion for Expedited Authorization to Shift Energy Efficiency Program

Funds (filed May 27, 2005, amended July 6, 2005, amended again on August 1, 2005, and then supplemented on August 5, 2005), except for the request to shift funds into Program Year 2002 Residential New Construction.

4. The addition of an Ordering Paragraph stating: The Pacific Gas and Electric Company is authorized to shift $1.6 million of unspent and uncommitted prior year energy program funds into 2004-2005 Single Family Rebate Program; $350,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Appliance Recycling program; $880,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Standard Performance Contract program; and shift $429,692 of unspent and uncommitted prior year energy program funds into the PY 2002 Residential New Construction Program in the manner proposed in its Motion for Expedited Authorization to Shift Energy Efficiency Program Funds (Filed May 27, 2005, amended July 6, 2005, amended again on August 1, 2005, and then supplemented on August 5, 2005). All funds approved herein should be used only for program direct implementation activities.

6. The Motion of the Alliance to Save Energy to File for No-Cost Extension of the 2004-2005 Energy Efficiency Program Proposal (June 10, 2005)

The Alliance to Save Energy (the Alliance), a non-profit organization based in Washington, D.C., is a non-utility provider. It implements two programs in the service territories of PG&E, Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E). The first program, Green Schools, is a school energy efficiency program that involves students in understanding and implementing energy efficiency improvements and integrates energy education into California's educational structure. The second program, Green Campus, is a student-led program designed to build student awareness about energy efficiency and its links to the environment and integrate energy activities into the curriculum. Since both these programs are based on the academic calendar year -- all major program activities take place from September to June, with the summers being used for planning purposes. Accordingly, the Alliance implemented first year projects from September 2004-May 2005, and is currently implementing summer programs and planning activities for the second year. The Alliance is requesting an extension of time to allow it to continue work with schools to complete activities through the second academic year of the program, which runs from September 2005 to May 2006. This is a reasonable proposal and entirely consistent with the underlying goals of the problem. Thus, we will approve the extension.

The Alliance is seeking the following changes to D.03-12-060:

1. The addition of a Finding of Fact stating: "The Green Schools and Green Campus programs awarded funding in this order are programs that function best when they can operate within an academic year (September to June)."

2. The addition of a Conclusion of Law stating: "Funding for the Green Schools and Green Campus programs should be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year."

3. The addition of an Ordering Paragraph stating: "Funding for the Green Schools and Green Campus programs shall be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year."

These proposed changes are appropriate, and we will make them.

7. The Motion of D&R International and California Integrated Waste Management Board for Transfer of Funds Between School Energy Efficiency Programs (Served on All Parties May 4, 2005, But Not Actually Filed Until August 22, 2005

The State and Consumer Services Agency was awarded approximately $4.5 Million in the 2002-2003 third-party program funding cycle to implement the School Energy Efficiency (SEE) program in the Central Valley. In mid-2003, SCSA requested that the California Integrated Waste Management Board (CIWMB) take over administration of the SEE Program for the remainder of its 2002-03 cycle. The Board's understanding as to the reason for the request was that the governor sought to redirect the State Consumer Service Agency's activities back toward its core mission and functions. The agency determined that the continued implementation of the SEE Program was not one of its core functions. Both the Commission and the CIWMB approved the proposed transfer to the CIWMB's Office of Education and the Environment. Given a six-month program delay that occurred as a result of the transfer of the program, the Commission also approved an extension through December 1, 2004 for completion of all SEE program activities.

D&R International began working with the State Consumer Service Agency to develop the SEE program in 2001 by assisting with the design and implementation of a Fresno Unified School District pilot program. Using this pilot program as the basis for the larger program model, D&R International helped to develop the SEE program proposal that was submitted to the Commission for the 2002-2003 third-party funding cycle. Once awarded funding, the State Consumer Service Agency released a request for proposal to hire an implementation subcontractor. Due to state contracting procedures, D&R International was deemed ineligible to submit a bid, given its involvement in the design and development of the Commission's proposal. The State Consumer Service Agency and D&R International continued to work together on other schools-related projects and D&R International submitted the proposal for continued SEE program and was awarded funding for the 2004-2005 program period.

D&R International reports that it has worked closely with CIWMB while both programs were active to ensure that the 2004 – 2005 follow-on program fully leveraged all of the momentum and expertise that the CIWMB program acquired over the past several years. D&R International has entered into subcontracts with two of the key field representatives from the CIWMB program, which will provide continuity for carry-over districts.

According to CIWMB's final accounting, at the conclusion of its efforts, it had a program balance of $316,227, consisting of $206,162 in unspent program funds, and a potential performance award of $110,065. D&R International now seeks to transfer these unspent funds to D&R International's 2004 – 2005 follow-on SEE program (Commission Program #1190-04). D&R International reports that at its December 14, 2004 board meeting, the CIWMB expressed its desire that these unspent funds go toward the continuation of the SEE Program, and directed that the CIWMB join D&R International in a motion before the Commission toward that end.

D&R International offers the following arguments in support of its motion:

1. D&R's SEE program is the follow-on program to CIWMB's SEE program and will continue to deliver similar services to participating school districts. Transferring unspent funds from the CIWMB program to the D&R program will allow the state of California to provide school districts will the full amount of funding that was intended for this sector when the Commission allocated $4.5 million for the 2002-2003 SEE program. The unspent funds are a result of unanticipated program delays rather than lack of program demand. To the contrary, there is a high demand for SEE program services which will exceed the lower funding level that D&R was allocated for the 2004-2005 program. D&R's SEE program will expand services to new school districts but will also continue to offer "non-duplicative" services to some of the current CIWMB participating school districts.

2. Due to the transition of program administration between state agencies, CIWMB did not launch an educational component of its program that offered teachers the opportunity to apply for funding to implement proposed energy efficiency activities until the fall of 2004. Many interested teachers did not receive funding, since the CIWMB SEE program ended on December 1, 2004. D&R International proposes to spend approximately 30% of transferred funding on the educational component of the program to expand energy education support to teachers, including increasing the budget for educational materials and support services as well as the number of teacher workshops provided.

3. Both CIWMB and D&R have experienced a high demand for facility-related services offered through

the program. These services include facility benchmarking to help school districts identify buildings that offer the greatest opportunity for energy savings, energy audits that provide specific retrofit recommendations, and assistance analyzing and implementing recommendations. D&R proposes to use approximately 70% of the transferred funding to increase the budget for these facility related services. Without this additional facility funding, D&R's budget and goal for facility services will be quickly over-subscribed. This element of the program is critical in helping participating districts to achieve measurable and sustainable energy savings.

4. D&R states that its SEE program is on track for meeting or exceeding all goals. Half-way through the implementation period, it had already achieved 80% of the participating district goal. This is especially Progress on other program goals includes 84% achievement of the facility-benchmarking goal and 55% completion of the facility audit goal.

For these reasons, D&R International asks the Commission for authority to shift all unspent funding and 100% of the performance award from the 2002-2003 CIWMB SEE program (up to $110,065) to the 2004-2005 D&R International SEE program. Upon Commission approval, D&R International will work with PG&E to revise the budget and implementation plan to account for the additional funding and increased goals

Since it appears that the D&R International program is in every respect the heir to the program administered by the CIWMB, it is reasonable and appropriate to transfer any of CIWMB's unspent funds to D&R International. In addition, because of the time required to process this fund-shifting request, and because D&R International is also working in an academic environment, we will also extend the period during which D&R International can encumber these funds to run through the end of the upcoming academic year (end of June 2006).

D&R International is seeking the following changes to D.03-12-060:

1. The addition of a Finding of Fact stating: "The School Energy Efficiency program proposed by D&R International, Ltd is sufficiently similar to the California Integrated Waste Management Board's (CIWMB) 2002 – 2004 School Energy Efficiency program (Commission Program #177-02) to merit utilizing any of its unspent funds."

2. The addition of a second Finding of Fact stating: "In order to fully utilize opportunities related to the 2005-2006 academic year, it would be most effective to allow use of funds by The School Energy Efficiency program proposed by D&R International, Ltd through June 2006."

3. The addition of a Conclusion of Law stating: "The School Energy Efficiency program proposed by D&R International, Ltd should be allocated any remaining funds related to the California Integrated Waste Management Board's 2002 – 2004 School Energy Efficiency program (Commission Program #177-02) and should be allowed to use any of its funding through June 2006."

4. The addition of an Ordering Paragraph stating: "The School Energy Efficiency program proposed by D&R International, Ltd shall be allocated any remaining funds related to the California Integrated Waste Management Board's 2002 – 2004 School Energy Efficiency program (Commission Program #177-02) and may use any of its funding through June 2006."

These changes are consistent with D&R International's request, and we will make them. In addition, we will make the following changes, in order to extend the period of time over which D&R International may encumber the funds:

1. The addition of a Finding of Fact stating: "The SEE program funding awarded to D&R International in this order is for programs that function best when they can operate within an academic year (September to June)."

2. The addition of a Conclusion of Law stating: "Funding for the SEE program as awarded to D&R International should be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year."

3. The addition of an Ordering Paragraph stating: "Funding for the School Energy Efficiency (SEE) program as awarded to D&R International shall be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year."

III. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. PG&E filed comments on October 17, 2005.

IV. Assignment of Proceeding

Susan Kennedy is the Assigned Commissioner and Steven Weissman is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E has received a refund of energy efficiency funds previously given to the CEC under Resolution E-3592 and D.01-06-037 for Market Assessment and Evaluation activities, including an update of DEER. From time to time other such refunds of energy efficiency funds, from CEC or from vendors, may occur.

2. Energy Division staff has requested that the California Investor Owned Utilities, including PG&E, fund studies to update the DEER.

3. PG&E is seeking authority to shift $1.6 million of unspent and uncommitted prior year energy program funds into the 2004-2005 Single Family Rebate program; $350,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Appliance Recycling program; $880,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Standard Performance Contract program; and shift $456,057 of unspent and uncommitted prior year energy program funds into the PY 2002 RNC program.

4. The addition of a Finding of Fact stating: "Granting PG&E's request for fund-shifting will provide necessary funds to support successful ongoing programs.

5. The Green Schools and Green Campus programs awarded funding in this order are programs that function best when they can operate within an academic year (September to June).

6. The School Energy Efficiency program proposed by D&R International is sufficiently similar to the California Integrated Waste Management Board's (CIWMB) 2002 – 2004 School Energy Efficiency program (Commission Program #177-02) to merit utilizing any of its unspent funds.

7. In order to fully utilize opportunities related to the 2005-2006 academic year, it would be most effective to allow use of funds by The School Energy Efficiency program proposed by D&R International through June 2006.

8. The SEE program funding awarded to D&R International in this order is for programs that function best when they can operate within an academic year (September to June).

Conclusions of Law

1. PG&E should be allowed to redirect the funds previously given to the CEC under Resolution E-3592 for the purpose of supporting Market Assessment and Evaluation activities consistent with those previously to be undertaken by the CEC.

2. Except for the request associated with PY 2002 Residential New Construction Program, the Commission should approve PG&E's request to shift funds as set forth in its Motion for Expedited Authorization to Shift Energy Efficiency Program Funds (Filed May 27, 2005, amended July 6, 2005, amended again on August 1, 2005, and then supplemented on August 5, 2005). However, the approved funds should be used only for program direct implementation activities.

3. Funding for the Green Schools and Green Campus programs should be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year.

4. The School Energy Efficiency program proposed by D&R International should be allocated any remaining funds related to the California Integrated Waste Management Board's 2002 – 2004 School Energy Efficiency program (Commission Program #177-02) and should be allowed to use any of its funding through June 2006.

5. Funding for the SEE program as awarded to D&R International should be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year.

O R D E R

IT IS ORDERED that:

1. Decision 03-12-060 is modified as set forth in this order.

2. The Pacific Gas and Electric Company (PG&E) shall redirect the funds previously given to the California Energy Commission (CEC) under Resolution E-3592 for the purpose of supporting Market Assessment and Evaluation activities consistent with those previously to be undertaken by the CEC.

3. The Pacific Gas and Electric Company is authorized to shift $1.6 million of unspent and uncommitted prior year funds into 2004-2005 Single Family Rebate Program; $350,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Appliance Recycling program, and $880,000 of unspent and uncommitted prior year energy program funds into the 2004-2005 Standard Performance Contract program; in the manner proposed in its Motion for Expedited Authorization to Shift Energy Efficiency Program Funds (Filed May 27, 2005, amended July 6, 2005, amended again on August 1, 2005, and then supplemented on August 5, 2005). All these approved funds shall be used only for direct implementation activities.

4. The request of Pacific Gas and Electric Gas Company to shift $456,057 of unspent and uncommitted prior year funds into Program Year 2002 Residential New Construction Program is denied.

5. Funding for the Green Schools and Green Campus programs shall be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year.

6. The School Energy Efficiency program proposed by D&R International shall be allocated any remaining funds related to the California Integrated Waste

Management Board's 2002 – 2004 School Energy Efficiency program (Commission Program #177-02) and may use any of its funding through June 2006.

7. Funding for the School Energy Efficiency program as awarded to D&R International shall be extended through June 2006 in order to allow the programs to function effectively during the 2005-2006 academic year.

This order is effective today.

Dated October 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners